

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

BIO-MEDICAL APPLICATIONS OF ALABAMA,
INC. D/B/A FRESENIUS KIDNEY CARE
DAUPHIN ISLAND PARKWAY
Employer

and

Case 15-RC-201753

RETAIL, WHOLESALE AND DEPARTMENT
STORE UNION, LOCAL 932
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Report¹ on Objections is denied as it raises no substantial issues warranting review.²

LAUREN McFERRAN, MEMBER

¹ We have treated the Regional Director's "Report" as a Decision. See Sec. 102.69(c)(1)(i) of the Rules; 79 Fed. Reg. 74412, fn. 464 (Dec. 15, 2014). We have accordingly also treated the Employer's "exceptions" as a request for review. We evaluate the Employer's offer of proof under the objective standard "whether the conduct of a party to an election has the tendency to interfere with the employees' freedom of choice," which the Regional Director correctly set forth at the beginning of her decision. Accordingly, we do not rely on any reference by the Regional Director to evidence of actual interference, to the extent that her use of the phrase suggests the relevance of subjective evidence. *Cambridge Tool & Mfg. Co.*, 316 NLRB 716, 716 (1995).

² In denying review with respect to Objection 1, we do not rely on the Regional Director's statement that the Employer failed to specify the date when the Petitioner allegedly engaged in picketing in violation of Sec. 8(g) of the Act. Nevertheless we agree, for the reasons stated by the Regional Director, that the Employer failed to proffer evidence which, if introduced at a hearing, would constitute grounds for setting aside the election. See also *Poplar Living Center*, 300 NLRB 888 (1990) (violations of Sec. 8(g) not per se objectionable). With respect to Objection 2, we find the Employer's offer of proof insufficient to warrant a hearing based on *Nathan Katz Realty, LLC v. NLRB*, 251 F.3d 981 (D.C. Cir. 2001), or *Electric Hose & Rubber Co.*, 262 NLRB 186 (1982), because the Employer has not alleged that the union representative "stationed" herself in a no-electioneering zone, acted contrary to the instructions of a Board agent, or maintained a "continued presence" in an area employees "had to pass" in order to vote. Without expressing any view as to whether *Nathan Katz Realty, LLC* was correctly decided, Member McFerran agrees that the Employer's offer of proof is insufficient to establish a prima facie case under these authorities. *Park Chevrolet-Geo, Inc.*, 308 NLRB 1010 (1992). With respect to Objection 5, we find that, even assuming that the Petitioner's observer was acting as its agent before the election when he spoke to employees for up to 10 minutes in the patient care area, the proffered evidence failed to establish that the employees were waiting in line to vote or that they were located anywhere near the voting place at the time and, accordingly, the observer's conduct is not objectionable under *Milchem, Inc.*, 170 NLRB 362 (1968). *Cumberland Nursing & Convalescent Center*, 248 NLRB 322 (1980).

MARVIN E. KAPLAN, MEMBER

WILLIAM J. EMANUEL, MEMBER

Dated, Washington, D.C., October 1, 2018.